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QUESTION OF THE VIOLATION OF HUMAN RIGHTS AND FUNDAMENTAL FREEDOMS IN ANY PART OF THE WORLD

Report of the Special Rapporteur on the situation of human rights in Iraq, Mr. Andreas Mavrommatis

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Executive Summary

The Special Rapporteur travelled on mission to the Islamic Republic of Iran from 5 to 9 November 2000. He continued to receive, in lesser number, written claims and reports on the situation of human rights in Iraq and on several occasions interviewed Iraqi victims or witnesses of human rights violations. He also received information from governmental sources, United Nations agencies and programmes and non-governmental organizations. The report focuses on developments and allegations of human rights violations that have occurred during the reporting period, but it also includes allegations of past violations with continuing effects.

The Special Rapporteur's request to visit Iraq is still pending a response from the Government. Written inquiries concerning allegations of human rights violations have been submitted to the Government for reply. At meetings in Geneva and New York with the Permanent Representatives of Iraq to the United Nations, the Special Rapporteur discussed allegations of human rights violations by the Government, as well as the human rights/humanitarian situation in Iraq. The Government of Iraq, provided a written response (A/C.3/55/5) to the Special Rapporteur's interim report to the General Assembly (A/55/294).

With regard to humanitarian issues, it appears that although the oil-for-food programme and other humanitarian assistance have to some extent met certain immediate needs of the people, such as for food and medicines, they are a short-term response to the now long-term dramatic situation of people who do not deserve the suffering unintentionally inflicted on them. The Government of Iraq and the United Nations decided to embark on a dialogue without preconditions concerning the embargo at the beginning of 2001.

During his visit to the Islamic Republic of Iran, the Special Rapporteur met with a number of religious dignitaries of the Shia faith, including Ayatollah Al Hakim, who alleged that human rights violations had been committed against them by the Government of Iraq. The allegations included the harassment of Shia priests taking the form of frequent arrests, disruption of religious ceremonies, including occasionally by use of armed force, and restrictions on most ayatollahs, with a resultant reduction in the number of religious scholars, students and other dignitaries in, particularly, seminaries.

During the reporting period, the Special Rapporteur continued to receive accounts of alleged arbitrary executions by the Government of Iraq and of other serious violations of Iraq's obligations under articles 6 and 14 of the International Covenant on Civil and Political Rights, relating to the rights to life and to a fair trial. The Special Rapporteur received unconfirmed information that laws imposing the death penalty for certain crimes are applied retroactively. Many individuals interviewed whose relatives had been executed also reported being informed with an up-to-three-year delay about the executions and spoke about the existence of cemeteries where executed prisoners are buried in graves marked only with serial numbers.

The Special Rapporteur received information that armed raids are still carried out by the Iraqi security forces against villages in the south of Iraq. Reportedly, some of these raids, which are carried out with the aim of capturing armed guerrillas and army deserters, have resulted in loss of life, damage to property and searches and arrests without warrant.

The Special Rapporteur received further allegations to the effect that suspects are subject to ill-treatment, psychological pressure and torture during questioning. The Special Rapporteur met some men whose ears had been cut off as a punishment some years ago. One of them also had a visible brand mark on his forehead. Some of these individuals alleged that this form of cruel punishment is still being applied.

The Special Rapporteur continued to receive information to the effect that men and women, including minors, are arrested and detained on suspicion of political or religious activities perceived as hostile to the regime, or simply because of family ties with members of the opposition, other activists and armed resisters. The Special Rapporteur met with men and women who reported being detained for long periods without being informed of the charges against them, without being brought before a judge or having access to a lawyer and without their families being informed of their place of detention.

The Special Rapporteur received information from certain sources that some decrees and laws are not made public. Allegedly, there are two different versions of the official gazette; only one is made public, while the other is restricted to a very limited number of top officials. The Special Rapporteur also received information to the effect that the judiciary is subjected to pressure from the ruling party when dealing with specific cases and is not allowed to consider certain matters which are within the competence of the extrajudicial authorities. Allegedly, certain categories of accused persons, such as army deserters, are denied due process of law.

The Special Rapporteur has received detailed information on what is alleged to be a policy of arabization of the Kirkuk area and other Kurdish areas controlled by the Government of Iraq. A list of people deported from those areas from 1996 to the end of 1999 was made available to the Special Rapporteur and will be transmitted to the Government of Iraq for its reply.

With regard to Kuwaitis unaccounted for since the time of Iraq's occupation of Kuwait, the Government of Kuwait has continued, during the reporting period, to devote efforts and resources to investigating the fate of missing Kuwaitis in the framework of the Tripartite Commission and its Technical Subcommittee. The Government of Iraq continues not to attend meetings of the Tripartite Commission. The Special Rapporteur has received new material collected by the Government of Kuwait, including some comparative studies and documentation, allegedly confirming that the Government of Iraq is in a position to clarify the fate and/or whereabouts of unaccounted for Kuwaitis. The Government of Iraq reiterated its views with regard to its refusal to participate in the meetings of the Tripartite Commission and Technical Subcommittee and re-stated its willingness to extend its cooperation to the International Committee of the Red Cross (ICRC) and to have bilateral meetings with representatives of Kuwait.

With regard to missing Iraqis, the Government of Iraq reiterated allegations that there are 1,250 missing Iraqi citizens, both military and civilians, who were reportedly residing in Kuwait at the time of the occupation, in August 1990, and who were allegedly last seen in the hands of Kuwaiti forces or in Kuwaiti places of detention. The Government of Kuwait emphasized that only 660 files of missing Iraqis were submitted before 31 July 1996 and are therefore to be considered within the framework of the Tripartite Commission, in accordance with its rules of

procedure and established methods of work. The ICRC has received an additional 352 files from the Government of Iraq. These files are to be dealt with on a bilateral basis by the Governments of Iraq and Kuwait through established ICRC procedures. The Government of Kuwait gave the Special Rapporteur assurances that it is its intention to cooperate within the Government of Iraq within the existing framework and procedures, and reiterated that the Special Rapporteur would be guaranteed access to any place of detention in the country at any time and without any restrictions. The Special Rapporteur proposes to take up the matter of all missing persons with all the Governments concerned.

During his visit to the Islamic Republic of Iran, the Special Rapporteur met with a number of Iraqis who were allegedly expelled from Iraq in the early 1980s because of being of Iranian origin. It was reported that their family members aged between 15 and 30 at the time were detained by the Iraqi forces and have been missing since then. The number of missing allegedly amounts to 7,000. The Special Rapporteur was also told that the aforesaid expulsions were allegedly accompanied by the expropriation of property and the loss of other citizenship rights. Allegedly, the large group of persons expelled from Iraq during the Iran-Iraq war was composed of Iranian citizens working and living in Iraq, Iraqis whose ancestors had come from Iran, and Iraqis of Shia faith who had never had any link with Iran. Still today, a number of expellees who were not able to prove their Iranian ancestry are considered as stateless, as they are not accepted as Iraqi nationals by the Government of Iraq and have not been able to obtain, or did not seek the Iranian citizenship.

Introduction

1. The mandate of the Special Rapporteur on the situation of human rights in Iraq, established in Commission on Human Rights resolution 1991/74 of 6 March 1991, was extended most recently by the Commission in its resolution 2000/17 of 18 April 2000. The present report is submitted pursuant to paragraph 4 (a) of resolution 2000/17.

2. The present report covers the period from 14 August to 30 November 2000 and is to be read in conjunction with the report of the Special Rapporteur to the General Assembly (A/55/294) and his oral update to the Third Committee of the General Assembly on the occasion of his presentation of that report on 25 October 2000. The present report also takes note of the debate on Iraq and resultant resolutions of both the Commission on Human Rights and the General Assembly.

3. As in the case of the two previous reports, this report focuses on developments and allegations of human rights violations that have occurred during the reporting period, but it also includes allegations of past violations with continuing effects.

4. Noteworthy allegations of fresh or continuing violations received during the period under review were those the Special Rapporteur heard during his visit to the Islamic Republic of Iran from 5 to 9 November 2000. In Iran, the Special Rapporteur interviewed Iraqi refugees, who spoke about the current situation of human rights in Iraq and, in particular about such issues as religious persecution or intolerance, missing persons and raids on villages resulting in loss of life and arrests. Some of them also spoke about abject poverty, malnutrition and yet having to barter or sell their food rations, and infant mortality.

5. During the reporting period, the Special Rapporteur had meetings in Geneva and New York with representatives of the Government of Iraq. The Special Rapporteur also had meetings with the Chairman and other members of the Kuwait National Committee for Missing and Prisoners of War Affairs. The Special Rapporteur also met with other government representatives, including permanent and other members of the Security Council.

6. The Special Rapporteur this year received fewer written allegations of human rights violations, as well as reports and information from non-governmental organizations, Iraqi opposition groups, Governments, United Nations specialized agencies and programmes, and submissions on the humanitarian aspect of the embargo.

7. During the reporting period, the Special Rapporteur submitted a number of letters to the Government of Iraq containing allegations of human rights violations and discussed them further orally with Iraqi representatives.

8. The Government of Iraq, in its response to the Special Rapporteur's interim report to the General Assembly (A/C.3/55/5) simply dismissed most of the Special Rapporteur's "findings" by alleging that they were based on information provided by sources hostile to the Government of Iraq. In this regard, the Special Rapporteur wishes to reiterate that his approach is similar to that of treaty bodies when dealing with communications, namely, with very few exceptions, he sifts the material he receives and only transmits those allegations that appear to be credible and,

most importantly, that include such details as would enable the Government to identify, examine and admit or refute the allegations or to give its own version of the events, whereupon the Special Rapporteur may draw conclusions. Conclusions may also be drawn after the Government has had sufficient time to reply and either gives no reply or vague or very general ones. This is the reason why to date the Special Rapporteur reached few conclusions whilst waiting for governmental replies.

9. The above is the main reason why, whilst noting with satisfaction that a form of dialogue with representatives of the Government of Iraq continued during the reporting period and that the Government provided some of the official documents requested, the Special Rapporteur wishes to reiterate that he deems a visit to Iraq absolutely necessary. It would allow him to study the situation of human rights *in situ* and to verify the truthfulness of the accounts received, as well as to engage the Government in a dialogue on the situation of human rights in the country at an appropriate level. At the time of writing, the Government of Iraq had not yet responded positively to the Special Rapporteur's request to visit the country.

I. HUMANITARIAN ISSUES

10. The Special Rapporteur has on several occasions clarified his position on the humanitarian aspects of the embargo and expressed his grave concern, which he is now reiterating.

11. Since September 2000, there were a number of developments and particular reference is made to the two latest reports of the Secretary-General under Security Council resolution 1302 (2000) as well as to the increasing number of humanitarian flights to Baghdad. These flights, whilst insignificant in terms of humanitarian assistance given the gravity of the problem, are quite significant in terms of giving expression to the sentiments of international opinion regarding the plight of, especially, vulnerable groups such as infants, children and mothers.

12. The Special Rapporteur has, as already stated, received several reports, as well as oral allegations, regarding the humanitarian situation. It would be pertinent to refer very briefly to some of them. The Secretary-General, in his report to the Security Council (S/2000/857) on the implementation of phase VII of the oil-for-food programme had the following, *inter alia*, to say on the humanitarian situation: "grave problems persist within the country and the economic and social welfare of the Iraqi people continues to be of serious concern. Many humanitarian and human rights organizations have highlighted the suffering of the people of Iraq, in particular that of children and other vulnerable groups". The Secretary-General then proceeded to mention the long-term adverse effects of the embargo, which the Special Rapporteur deems to be the most serious problem that innocent people would continue to face for many years, if not generations, and that as such calls for remedial action. In the same report, the Secretary-General refers to the heavily incapacitated infrastructures, and to the World Food Programme's finding that equipment on which the food sector depends is in a deplorable state.

13. In his report on the implementation of phase VIII of the oil-for-food programme, dated 9 November 2000 (S/2000/1132), the Secretary-General had the following to say on the same or similar issues: "the vast majority of the Iraqi people still faces a situation of decreasing

income, thereby intensifying ... dependence [on] the programme. The programme is not geared to address the longer-term deterioration of living standards". The Secretary-General also referred to delays in contracting by the Government of Iraq and delays in the approval of applications by the Security Council Committee and the unacceptably high number of applications placed on hold, and addresses problems in respect of health, nutrition, water, sanitation, electricity, education, telecommunication, housing etc., ending his report with these words, which the Special Rapporteur wishes to echo: "Finally, I wish to reiterate what I stated recently, that 'in the case of Iraq, a sanctions regime that enjoyed considerable success in its disarmament mission has also been deemed responsible for the worsening of a humanitarian crisis - as an unintended consequence. I deeply regret the continuing suffering of the Iraqi people and hope that the sanctions imposed on Iraq can be lifted sooner rather than later. But this demands that we find a way, somehow, to move the Iraqi Government into compliance with the Security Council resolutions'. It is in this spirit that I appeal for a renewed and concerted effort by all to reach a solution that would lead to the alleviation of the plight of the Iraqi people."

14. Both during the debate on his report to the General Assembly and during his contacts with Governments, the Special Rapporteur was requested to include in his next report some reliable statistics on the effects of the embargo. The following two paragraphs contain a summary of the most recent and relevant statistics produced by United Nations agencies and programmes.

15. According to a UNICEF survey of August 1999, in the south and centre of Iraq, where 85 per cent of the population resides, the under-five mortality rates rose from 56 deaths per 1,000 live births in the period 1984-1989 to 131 deaths per 1,000 live births in the period 1994-1999. According to the same survey, infant mortality increased from 47 per 1,000 live births to 108 per 1,000 live births during the same period. The study shows that in the northern governorates, the under-five mortality rose from 80 deaths per 1,000 live births in the period 1984-1989 to 90 deaths per 1,000 live births in the period 1989-1994, but then fell to 72 deaths per 1,000 live births between 1994 and 1999.[1] According to UNFPA, the maternal mortality rate increased from 50 per 100,000 live births in 1989 to 117 per 100,000 in 1997.[2] Low birth weight babies (under 2.5 kilos) rose from 4 per cent in 1990 to almost a quarter of registered births in 1997, due mainly to maternal malnutrition.[3] The 2000 WHO Report ranks Iraq as a country with a high mortality rate for children and adults.

16. Prior to 1991, health care reached approximately 97 per cent of the urban population and 78 per cent of rural residents. A national welfare system was in place to assist orphans or children with disabilities and to support the poorest families.[4] Today, according to the International Committee of the Red Cross (ICRC), Iraq's 130 hospitals are in an appalling condition because they have received no repair and maintenance since the imposition of the embargo and for the lack of necessary equipment. Furthermore, the standards of treatment have deteriorated dramatically for the lack of medical literature and training.[5]

17. The Special Rapporteur wishes to note that the Inter-Parliamentary Union, in a resolution adopted at its 104th Conference, held in Jakarta, Indonesia, from 12 to 21 October 2000, made reference to sanctions in general and called on the Security Council to lift the United Nations sanctions of a global nature, including those imposed on Iraq.

18. Following meetings between the Secretary-General and the delegation of Iraq in Doha, during the summit of the Organization of the Islamic Conference in November 2000 and later in New York, it was agreed that the United Nations and Iraq will embark on a dialogue without preconditions on the embargo at the beginning of 2001. The Special Rapporteur welcomes this development and hope that the mechanisms for all types of contacts will be agreed upon at the earliest possible opportunity.

19. The Special Rapporteur is of the opinion that the Government of Iraq should, in accordance with its obligations under article 2, paragraph 1, of the International Covenant on Economic, Social and Cultural Rights, take all necessary steps, to the maximum of its available resources, to achieve the realization of the rights enshrined in the Covenant. In this respect, the Special Rapporteur welcomes the decision of the Government of Iraq to increase allocations under the oil-for-food programme to meet the food, nutrition and health requirements of the population.

20. It appears that although the oil-for-food programme and other humanitarian assistance have met to some extent certain immediate needs, such as food and medicines, it is a short-term answer to a now, long-standing drama of people who do not deserve the suffering unintentionally inflicted on them. Therefore, all humanitarian concerns should be kept under constant review and necessary adjustments continued to be made. In this respect, the Special Rapporteur welcomes the appointment by the Secretary-General, under Security Council resolution 1302 (2000), of a panel of experts to prepare a study on the humanitarian situation in the country. The Special Rapporteur urges the Government of Iraq to cooperate with the panel of experts.

21. In conclusion, the Special Rapporteur wishes to make a brief reference to the very interesting working paper by Marc Bossuyt prepared in June 2000 for submission to the Sub-Commission (E/CN.4/Sub.2/2000/33) in which *inter alia* he recommends that Special Rapporteurs, especially country rapporteurs, evaluate sanctions regimes imposed on the countries of their mandate in the light of a six-prong test. This working paper, which makes a reference to sanctions regimes in general and to that imposed on Iraq in particular, was taken up by the Sub-Commission during its latest session, at which it adopted resolution 2000/25 on the adverse consequences of economic sanctions and decision 2000/112, in which it appealed again to the international community and to the Security Council in particular for the embargo provisions affecting the humanitarian situation of the population of Iraq to be lifted.

II. RELIGIOUS INTOLERANCE AND PERSECUTION

22. During his visit to the Islamic Republic of Iran, the Special Rapporteur met with a number of religious dignitaries of the Shia faith, including Ayatollah Al Hakim, who made allegations concerning human rights violations that had been committed against them by the Government of Iraq, including harassment of Shia priests in the form of frequent arrests, disruption of religious ceremonies, including occasionally by the use of armed force, restrictions on most ayatollahs, with a resultant reduction in the number of religious scholars, students and other dignitaries in, particularly, seminaries.

23. Contrary to information previously reported to the Special Rapporteur, it was now clarified that the mosque in Nejaf was never closed to the faithful, but only underwent some repairs and even then it remained open.

24. During the visit to Iran, the Special Rapporteur interviewed the brother of an individual of Shia faith who was allegedly arrested in 1998 for carrying in his car Islamic books and other religious papers. He was allegedly taken to the Baghdad Security Headquarters and executed about five months later, along with another 79 individuals, on charges of belonging to a Shia movement. The family reportedly found out about the execution upon delivery of the body for burial.

25. The Special Rapporteur received information that, in the month of May 2000, the Government of Iraq allegedly took measures to prevent non-residents under the age of 30 from visiting the Shia holy places in Kerbala and Nejaf without previous approval of the security forces. More than 15,000 Republican Guards, armed with light weapons and in civilian clothes, were deployed on the main roads leading to the cities of Kerbala and Nejaf and inside those cities in order to enforce this prohibition. The Special Rapporteur submitted these allegations to the Government's attention on 22 May 2000, with a request for clarification by the Government, including confirmation or denial that such measures had been taken and an explanation of the reasons for them. The response of the Government is still pending.

III. EXTRAJUDICIAL, SUMMARY AND ARBITRARY EXECUTIONS

26. During the reporting period, the Special Rapporteur continued to receive accounts of alleged arbitrary executions by the Government of Iraq and of other serious violations of Iraq's obligations under articles 6 and 14 of the International Covenant on Civil and Political Rights, relating to the right to life and to a fair trial.

27. The Government of Iraq, in its response to the Special Rapporteur's interim report to the General Assembly, stated that the death sentence was a punishment only "for the most serious crimes" and that measures against those charged which such crimes were taken only after "proper, fair and public trials by independent and competent courts and in accordance with the law in force" (A/C.3/55/5, annex).

28. The Special Rapporteur received unconfirmed information that laws imposing the death penalty for certain crimes are applied retroactively. Many of the individuals interviewed whose relatives had been executed reported being informed about the executions with a delay of up to three years and spoke about the existence of cemeteries, allegedly both in Baghdad and in the Governorate of Misan, where executed prisoners are buried in graves marked only with serial numbers. The seriousness of these allegations warrants further investigation and, as necessary, transmittal of the findings to the Government of Iraq for explanation.

29. During his visit to the Islamic Republic of Iran, the Special Rapporteur interviewed Mr. Razak Moheiber Agamy, a graduate in engineering from Baghdad University, coming from Nasiriyah, Dhi-Qar Governorate. He claimed that his father and five brothers had been either

arrested or executed. He alleged that his father had been executed publicly and that one of the brothers had been executed after a trial that was not held in public. He also alleges that this brother did not have access to a lawyer and that the corpse was not given to the family for burial.

30. The Special Rapporteur received information to the effect that on or about 16 December 1998 Staff General Kamil Aziz al-Janabi was shot dead by Qusay Saddam Hussein in the latter's office in Baghdad after an argument between them. The body was handed over to the family 45 days later by the director of Abu Gharib prison in Baghdad.

31. The above allegations, with attached supporting documentation, such as death certificates, were submitted to the Government of Iraq on 24 November 2000. The Special Rapporteur awaits a detailed response from the Government on these allegations and will, if necessary, revert to them, as well as to other violations in respect of which replies are pending, in his next reports. The Special Rapporteur urges the Government of Iraq to provide the information requested, including relevant parts of the trial records, particularly the judgement, the names of the defence counsel and, in the case of convictions, the sentences passed, whether they were reviewed by a higher tribunal and whether there is a general provision to that effect in the law.

32. The Special Rapporteur received unconfirmed information about the execution of a number of women found guilty of prostitution. The Special Rapporteur asked the Government of Iraq to supply him with information as to whether prostitution is a crime and the punishment therefor, as well as whether there have been any recent convictions for prostitution. He also inquired whether desecration of national symbols, such as the flag, is a crime and, if it is, the punishment provided by law.

33. On 14 June 2000, the Special Rapporteur transmitted to the Government information he had received to the effect that, on 19 September 1999, groups consisting of members of the ruling party backed by emergency forces and security and intelligence personnel launched a campaign against the al-Rahma tribe in the Suq al-Shuyukh district, Governorate of Dhi Qar. Jabbar Saad al-Rahmawi, the tribe's sheikh, and his son Falih Jabbar al-Rahmawi were executed on 5 October 1999 and their bodies were handed over on the same day. Subsequently, on 10 November 1999, 11 young men of the tribe were executed and signs of torture were observed on their bodies. The Government replied that, according to the information available, Jabbar Saad al-Rahmawi had died of natural causes in 1995, while his son had been tried for murder by the competent court, along with the 11 other young men. As it was not indicated in the response what the sentence by the court was and the requested record of the criminal proceedings was not provided, the Special Rapporteur has asked for additional clarifications.

34. On 14 June 2000, the Special Rapporteur transmitted to the Government of Iraq information he had received to the effect that in November 1999 three officers, who were named, were allegedly executed at the al-Rashid camp, in the presence of a large number of military personnel of all ranks, on charges of having conspired against the Party and the Revolution. On the same date the Special Rapporteur transmitted to the Government allegations to the effect

that five residents of the town of Kerbala, whose names were given, were executed on 3 October 1999. The families of the executed were allegedly told that no funeral service was to be held.

35. On 10 August 2000, the Special Rapporteur requested a response on the case of Mr. Sabah Fattah Amin, who was allegedly arrested in the city of Kirkuk in March 2000 and charged with verbally insulting the President of Iraq. Allegedly, this individual was under the influence of alcohol. He was reportedly first detained at the security headquarters of the First Army Corps and then transferred to the Public Security Governorate in Baghdad. In early May 2000, Mr. Fattah Amin allegedly faced trial before the Court of State Security and was sentenced to death. He was allegedly executed in mid-May 2000. No response to the aforesaid allegations has as yet been received.

36. Detailed responses in respect of specific allegations involving the right to life and the right to a fair trial are essential in order not only for the Special Rapporteur to pronounce on compliance or otherwise with articles 6 and 14 of the International Covenant on Civil and Political Rights, but also in order for him to begin a constructive dialogue with the Government on the above articles, whereby the Special Rapporteur could make specific recommendations that would assist in ensuring compliance with international human rights norms.

IV. ARMED RAIDS ON VILLAGES

37. The Special Rapporteur received information that armed raids are still being carried out by the Iraqi security forces against villages in the south of Iraq. Reportedly some of these raids, which are aimed at the capture of armed guerrillas and army deserters, have resulted in loss of life, damage to property and searches and arrests without warrant.

38. Allegedly, at the beginning of October 2000 a raid was carried out in the village of Atchidi, in the district of Comert, Governorate of Misan, by the 4th Brigade of the Iraqi Army. About 450 heavily armed Iraqis were reportedly involved against a population of approximately 300 people. During this raid, shots were allegedly fired at fleeing villagers without any warning.

39. The Special Rapporteur also received information to the effect that the houses of six suspected deserters and opponents of the regime were burnt in the village of Al Cassora, where several people, including women and children, died as a result of a raid carried out at the end of September/beginning of October 2000. Similar action has reportedly been taken in the Governorate of Wasit, where, approximately six months ago, in the district of Albashar, the village of El Hai, consisting of 21 houses, was allegedly shelled and completely destroyed.

40. The above allegations were submitted to the Government on 15 November 2000. In response to similar allegations, submitted on 14 June 2000, regarding the Qal'at Salih district in the Governorate of Misan, the Government stated that that district is situated "on the Iraq-Iran boundary" and that "Iraqi military units are stationed there to protect the border and prevent the infiltration of individuals or terrorist groups and thus safeguard national security". The Special Rapporteur urges the Government to reply to the specific allegations in respect of each case referred to it and to give the justification for the particular measures taken.

V. TORTURE AND OTHER CRUEL, INHUMAN OR DEGRADING TREATMENT

41. The Special Rapporteur received further allegations to the effect that suspects are subjected to ill-treatment, psychological pressure and torture during questioning.

42. During his visit to the Islamic Republic of Iran, the Special Rapporteur met with Mr. Kazim El Gouda Al Sadi, 50 years old, from the village of Alhambra, Basra Governorate, Iraq. This individual, who fled Iraq in or about May 2000, alleges that he was arrested on 16 July 1998 and taken to the security directorate in Basra together with a cousin for questioning. He claims that he was severely tortured and that he was in extremely bad physical condition upon his release 15 days later. He bears visible serious scars on his right foot and on both hands, all allegedly the result of his ill-treatment.

43. One individual, who wishes to remain anonymous, reported that on 13 October 1998 he was arrested on suspicion of collaborating with the Government of Iran and taken to the security headquarters in Nasiriyah where he was severely tortured. He was allegedly blindfolded and given electric shocks in his thumbs and feet and was also severely beaten on the soles of his feet by two officers. Reportedly, he was suspended by his hands to a fan on the ceiling and then beaten on his back. He was allegedly tortured several times over a period of two months in an attempt to extract information and to make him confess. Reportedly each torture session lasted for about one hour.

44. Regarding prison conditions, one individual reported being detained in a cell of 3 by 5 metres together with another 19 detainees in the "detention camp" of Bakhuba, Diyala Governorate. He reported that beatings by prison guards were frequent. He bears marks that he alleges were caused by beatings with a rubber truncheon filled with metal. He also reported that prisoners were given very little food and that they were allowed out of the cell only twice a day to go to the toilet. Visits were allegedly not permitted.

45. The Special Rapporteur interviewed Nasser Kazen Issa, 30 years old, from Basra city, a former regular soldier in the Iraqi army, who alleged that he deserted in or about June 1994 and was arrested on 16 August 1994 and taken to the Dyalla prison, where he was kept for a year until he escaped. He alleges that on 17 August 1994 he was given an anaesthetic whilst in prison and when he recovered consciousness both his ears had been cut off as a punishment. He also bears a visible 6 to 7 centimetres-long oblong brand mark on his forehead. He alleges that this form of cruel punishment is still being applied. Another two individuals, who did not want their names revealed, made similar allegations.

46. The Special Rapporteur submitted the above allegations to the Government of Iraq on 15 November 2000 with a request for information as to whether such form of cruel punishment is still applied in Iraq, as he was previously assured that it had ceased to be imposed several years ago.

VI. ARBITRARY ARREST AND DETENTION, FAIR TRIAL AND DUE PROCESS OF LAW

47. The Special Rapporteur continued to receive information to the effect that men and women, including minors, are arrested and detained on suspicion of political or religious activities perceived as hostile to the regime, or simply because of family ties with members of the opposition, other activists and armed resisters.

48. The Special Rapporteur met with men and women who reported being detained for long periods without being informed of the charges against them, without being brought before a judge or having access to a lawyer and without their families being informed of their place of detention. Some of the men and women interviewed reported spending long periods in prison without trial and without knowing the reason for their continued detention or imprisonment.

49. Allegations were also received from women whose husbands, brothers or children had been arrested and who claimed that they did not dare to go to the police or security headquarters to inquire about their loved ones for fear of being arrested themselves.

50. The Government of Iraq, in its response to the Special Rapporteur's interim report to the General Assembly, stated that under article 92 of the Iraqi Code of Criminal Procedure "no person may be arrested or detained other than under an order issued by a judge or in other circumstances in which such action is permitted by law" and gave assurances that, under article 109 and subsequent articles of the Iraqi Criminal Procedure Code, accused persons have "all the legal guarantees ... including the right to defence, to appoint counsel, to be tried in public, to call witnesses and to use the right of legal contestation such as appeal" (A/C.3/55/5, annex).

51. The Special Rapporteur urges the Government of Iraq to provide more detailed information as to the "other circumstances" that permit arrest and detention without a court order, to provide him with copies of laws and decrees regulating arrest, detention, remand in custody and trial and, through individual cases, demonstrate how safeguards are applied in practice.

52. The Special Rapporteur received information from certain sources that some decrees and laws are not made public. Allegedly, there are two different versions of the official gazette and only one is made public while the other is restricted to a very limited number of top officials. The Special Rapporteur would appreciate receiving assurances, backed if possible by the Bar Association, that these allegations are not true.

53. The Special Rapporteur also received information to the effect that the judiciary is subjected to pressure by the ruling party when dealing with specific cases and is not allowed to consider certain cases which are within the competence of extrajudicial authorities. Allegedly, certain categories of accused persons, such as army deserters, are denied due process of law. The Special Rapporteur would welcome explanations and assurances to the contrary.

VII. MASS RELOCATIONS OF NON-ARABS AND ARABIZATION OF AREAS FROM WHICH THEY ARE EXPELLED

54. With regard to allegations referring to mass relocations of non-Arabs and arabization of areas from which they are expelled, the Special Rapporteur would like to refer to his interim report to the General Assembly (A/55/294).

55. On 10 August 2000, the Special Rapporteur transmitted to the Government of Iraq information he had received to the effect that the new official in charge of the Kirkuk branch of the Bah'at party, Atiyyah Shindakh, issued an order on 3 May 2000 to party units to carry out, in collaboration with security and police units, a large-scale search operation in Kirkuk district and to draw up a list of Kurdish and Turkoman families living in the area. Allegedly, the latter have been requested to change their "ethnicity" to Arab and threatened with deportation if they refuse to comply. The Government of Iraq, in its reply to the Special Rapporteur, dismissed the allegations by affirming that Iraq has already provided responses on the matter on many occasions.

56. The Special Rapporteur has received detailed information on what is alleged to be a policy of arabization of the Kirkuk area and other Kurdish areas controlled by the Government of Iraq. A list of people deported from 1996 to the end of 1999 was made available to the Special Rapporteur and will be transmitted to the Government of Iraq for its response.

VIII. MISSING PERSONS

57. The main category of alleged violations that have continuing effects is that of disappearances. The fate of the missing persons concerned, despite successive requests for information and other inquiries, still remains uncertain. It is the duty of Governments to examine carefully all such allegations, especially those concerning which sufficient details are given to facilitate such inquiry.

A. Kuwaitis unaccounted for since the time of the Iraqi occupation of Kuwait

58. During the reporting period, the Special Rapporteur had meetings with representatives of the Government of Kuwait and members of the National Committee for the Missing and Prisoners of War, including its chairman, and discussed the issue of Kuwaitis unaccounted for since Iraq's occupation of Kuwait.

59. The Government of Kuwait has continued, during the reporting period, to devote efforts and resources to investigating the fate of the 605 Kuwaitis missing since the time of the Iraqi occupation, in the framework of the Tripartite Commission and its Technical Subcommittee. The Government of Iraq continues not to attend meetings of the Tripartite Commission.

60. During meetings in Geneva with representatives of the Government of Iraq, the Special Rappor[illegible]in expressed the view that general replies, claiming that Kuwaiti prisoners of war were las[illegible] in the south of Iraq at the time of the uprising, are not sufficient. The Special

Rapporteur has received new material collected by the Government of Kuwait, including some comparative studies and documentation, allegedly confirming that the Government of Iraq is in a position to clarify the fate and/or whereabouts of unaccounted for Kuwaitis.

61. The Government of Iraq reiterated its view with regard to its refusal to participate in the meetings of the Tripartite Commission and the Technical Subcommittee and restated its willingness to extend its cooperation to ICRC and to have bilateral meetings with representatives of Kuwait. The Special Rapporteur hopes that the opening of a new ICRC office in Basra will facilitate dialogue among interested parties and will help speed up the investigations of, at least, the most well-documented files.

62. The Special Rapporteur reiterates his appeal to the Government of Iraq to cooperate with the established mechanisms and to do its utmost to resolve this purely humanitarian problem.

B. Missing Iraqis

63. The Government of Iraq reiterated allegations that there are 1,250 missing Iraqi citizens, both military and civilians, who were reportedly residing in Kuwait at the time of the occupation in August 1990 and who were allegedly last seen in the hands of Kuwaiti forces or in Kuwaiti places of detention. Some documentation on the issue was provided to the Special Rapporteur by the Government of Iraq.

64. The above-mentioned allegations were brought to the attention of the Government of Kuwait. The Government of Kuwait pointed out that it was not in power at the time referred to, but that it nevertheless accepted, on humanitarian grounds, to deal with the matter within the framework of the Tripartite Commission. The Government of Kuwait also emphasized that, in accordance with the rules of procedure and methods of work established by the Tripartite Commission, only the 660 files concerning missing Iraqis submitted before 31 July 1996 were to be considered under the framework of the Tripartite Commission. Only 68 of those files are to be considered under phase one of the process, which is still ongoing and whose closure could be speeded up by Iraq's cooperation with the Tripartite Commission. The Government of Kuwait also stressed that some of the files submitted by Iraq to be considered under phase two of the procedure had been dealt with by the Kuwaiti authorities on humanitarian grounds.

65. The ICRC has received an additional 352 files from the Government of Iraq. These files were received after 31 July 1996 and they cannot therefore be considered within the framework of the Tripartite Commission and its Technical Subcommittee. Two hundred files were transmitted to the Government of Kuwait, others are still under ICRC scrutiny. All the files are to be dealt with on a bilateral basis by the Government of Iraq and the Government of Kuwait through established ICRC procedures.

66. The Government of Kuwait gave the Special Rapporteur assurances of its intention to cooperate with the Government of Iraq within the existing framework and procedures and reiterated that the Special Rapporteur would be guaranteed access to any place of detention in the country at any time and without any restrictions. The Special Rapporteur proposes to take up this issue also, with both the Government of Iraq and the Government of Kuwait.

C. Iraqis missing as a result of expulsions that occurred in the 1980s

67. During his visit to the Islamic Republic of Iran, the Special Rapporteur met with a number of Iraqis who were allegedly expelled from Iraq in the early 1980s because of being of Iranian origin. It was reported that those between the ages of 15 and 30 at the time were detained by the Iraqi forces and have been missing since then. The number of missing allegedly amounts to 7,000. The Special Rapporteur has already submitted nine cases for the attention of the Government of Iraq, with a request that it investigate the fate and whereabouts of these missing persons. The Special Rapporteur is now in the process of collecting data on other cases of the same nature and intends, in cooperation with the Working Group on Enforced or Involuntary Disappearances, to submit such cases to the Government in the near future for its attention.

68. The Special Rapporteur was also told that the aforesaid expulsions were allegedly accompanied by the expropriation of property and loss of other citizenship rights. Allegedly, the large group of persons expelled during the Iran-Iraq war was comprised of Iranian citizens working and living in Iraq, Iraqis whose ancestors had come from Iran and Iraqis of Shia faith who had never had any link with Iran. Still today, a number of expellees who were not able to prove their Iranian ancestry are considered stateless, as they are not accepted as Iraqi nationals by the Government of Iraq and have not been able to, or did not obtain, Iranian citizenship.

IX. RECOMMENDATIONS

69. The Special Rapporteur urges the Government of Iraq to respond positively to his request to visit the country and to engage in a sustained dialogue on the promotion and protection of human rights leading to specific remedial actions.

70. The Special Rapporteur is of the opinion that humanitarian concerns should be kept under constant review and necessary adjustments should continue to be made to ensure that the humanitarian needs and the long-term adverse effects of the embargo are addressed and the suffering of the people alleviated.

71. The Special Rapportuer also urges the Government of Iraq to take more steps, to the maximum of its available resources, to assist in improving the social, economic and cultural rights of the people of Iraq, especially because of their present plight.

72. The Special Rapporteur urges the Government of Iraq to approach the dialogue with the United Nations in a spirit of compromise, in order that results may be forthcoming at the earliest possible opportunity, thereby alleviating the tragic circumstances affecting innocent people.

73. The Special Rapporteur calls on the Government of Iraq to investigate and take appropriate measures to remove any restrictions on the exercise of religious freedom and to permit religious leaders, scholars and others freely to perform their religious functions.

74. The Special Rapporteur reiterates his call to the Government of Iraq to review and revise laws permitting the imposition of the death penalty and to consider a moratorium on executions.

75. The Special Rapporteur urges the Government of Iraq to examine all allegations of violations of human rights and, in particular, to take measures to ensure that all accused or suspected persons are guaranteed the rights enshrined in the International Covenant on Civil and Political Rights.

76. The Special Rapporteur calls upon the Government of Iraq to ensure that unjustified or excessive force is not used against civilians and inhabited places.

77. The Special Rapporteur urges the Government of Iraq to investigate all allegations of unlawful arrest and torture and to take remedial action accordingly.

78. The Special Rapporteur calls upon the Government of Iraq to examine carefully all allegations of forced relocations and to ensure that no person is relocated against his or her will.

79. The Special Rapporteur urges the Government of Iraq to take all necessary measures to investigate in depth the fate of all missing persons.

80. Given the humanitarian nature of the question of the missing and prisoners of war, the Special Rapporteur urges the Government of Iraq to again join in the work of the Tripartite Commission and the Technical Subcommittee and, pending such decision, to take steps to ensure that the necessary investigations in respect of pending cases continues and that relevant information is related, as appropriate, to its destination.

Notes

[1] See UNICEF, 1999 Iraq Child and Maternal Mortality Surveys.

[2] See Security Council document S/199/356, annex II, Report of the second panel established pursuant to the note by the President of the Security Council of 30 January 1999 (S/1999/100), concerning the current humanitarian situation in Iraq.

[3] Ibid.

[4] Ibid.

[5] ICRC, "Iraq: a decade of sanctions", 14 December 1999.